

STATE OF NEW YORK
COUNTY COURT : COUNTY OF TOMPKINS

PEOPLE OF THE STATE OF NEW YORK,

Plaintiff,

vs.

DECISION and ORDER

Ind. No. 2019-0042

ROSE E. DEGROAT,

Defendant.

Defendant Rose DeGroat is charged by indictment with Attempted Assault in the 2nd Degree (2 counts), Obstructing Governmental Administration in the 2nd Degree, and Resisting Arrest. By Notice of Motion filed August 26, 2019, defendant, through her attorneys, Edward Kopko and Jerome Mayersak, seek dismissal of the indictment in furtherance of justice pursuant to Criminal Procedure Law §210.40. By Response dated September 9, 2019, the People, by Deputy District Attorney Andrew Bonavia, consent to dismissal of both Attempted Assault 2nd charges but oppose dismissal of the remaining two misdemeanor charges.

Dismissal in Furtherance of Justice

Criminal Procedure Law section 210.40 states, in relevant part:

1. An indictment or any count thereof may be dismissed in furtherance of justice... when, even though there may be no basis for dismissal as a matter of law ...such dismissal is required as a matter of judicial discretion by the existence of some compelling factor, consideration or circumstance clearly demonstrating that conviction or prosecution of the defendant upon such indictment or count would constitute or result in injustice.

“A court is authorized to dismiss criminal charges in the interest of justice if, upon considering the criteria set forth in CPL 210.40 and balancing the interest of the individual against those of the public, it concludes that the reasons favoring dismissal are both real and compelling” (People v Kennard, 266 A.D.2d 718, 719 lv. denied 94 N.Y.2d 864 [3rd dept. 1999]). Upon the analysis set forth below, it is clear that genuine and compelling reasons support dismissal of the charges.

The court makes the following findings based on the record before it, including multiple video recordings of the incident that led to these charges, as required under CPL §210.40 (1) (a-j).

In the early morning hours of April 6, 2019, two men, Cadji Ferguson and Joseph Ming, began arguing and scuffling with each other on the Ithaca Commons. Although other people were present and may have been involved, it is impossible to tell from the videos what role they may have played. The reason for the dispute is not known to the Court. At one point, Mr. Ming can be seen roughly pushing Mr. Ferguson away from himself. Mr. Ferguson then took off his jacket and charged Mr. Ming, knocking him to the ground. Mr. Ming immediately got up, apparently uninjured.

Four Ithaca Police officers were nearby and several witnessed Mr. Ferguson push Mr. Ming down. As a group, they rushed to apprehend Mr. Ferguson with Officer Herz in the lead. Officer Herz testified before the Grand Jury that he made the decision to use his taser on Mr. Ferguson before he reached him for two reasons. First, he said he made eye contact with Mr. Ferguson, a man he described as a “small, younger guy”, and concluded that he was about to run from the police. Second, “he had already used force against someone else – I had no idea the condition, the guy could have been unconscious for all I knew.” As he approached Mr. Ferguson, Officer Herz recalled ordering him to “Get down on the ground. Get down on the ground.” Per Officer Herz, Mr. Ferguson did not comply but tried to get away by going behind other people in the crowd. As another officer grabbed Mr. Ferguson, Officer Herz fell to the ground, having unknowingly been tripped by a

fellow officer. He testified that when he looked up he saw other officers trying unsuccessfully to physically restrain Mr. Ferguson. Having a clear line of sight to Mr. Ferguson's back, Officer Herz deployed his taser. "He went down just as picture perfect as we are trained and I immediately went towards him and tried to help take him into custody."

The video evidence contradicts parts of Officer Herz's account. While Mr. Ferguson did push Mr. Ming to the ground, Mr. Ming stood up within seconds in clear view of the police and well before any of the officers arrived at the scene. As the officers approached, Mr. Ming and Mr. Ferguson were essentially squaring off with each other like a couple of boxers. Neither appeared to have a weapon. As the police officers arrived, Mr. Ferguson turned away from them and took a couple of steps before he was forcefully grabbed and pushed toward the ground by the police. There was no time for Mr. Ferguson to hear, understand, or respond to the command that he get on the ground. As two officers sought to physically restrain him, Mr. Ferguson suddenly dropped straight to the ground, paralyzed by the taser. Mr. Ferguson was unarmed and was not fighting with the officers when he was tasered. He is clearly visible in a video with one arm free while an officer twisted him around by his other arm.

Ms. DeGroat is visible in the videos apparently attempting to calm Mr. Ferguson when the police descended on him. She was moving toward Mr. Ferguson as he was pushed by the police when he suddenly collapsed. An officer immediately got on top of Mr. Ferguson to handcuff him. As Ms. DeGroat threw herself into the melee in defense of Mr. Ferguson, three officers went after her and forcibly took her to the pavement face first. Ms. DeGroat is seen struggling with the officers as they subdued and handcuffed her.

(a) the seriousness and circumstances of the offense;

Upon the dismissal of the Attempted Assault 2nd charges, defendant remains charged with Obstructing Governmental Administration and Resisting Arrest, both Class

“A” misdemeanors in New York State, punishable by up to one year of incarceration. Defendant appears to have been an interested bystander to a fight between her friend and Mr. Ming. She is charged for her actions in response to the aggressively forceful manner by which the police subdued Mr. Ferguson.

Ms. DeGroat witnessed the police charge toward her friend, forcibly grab him and inexplicably taser him. She saw him collapse to the ground, unable to move. As soon as Mr. Ferguson was down, a police officer jumped on top of him. In the Court’s view, Ms. DeGroat reacted instinctively to protect Mr. Ferguson in this fast moving and bewildering situation. If not for the regrettable actions of the police, she likely would not have intervened. When officers sought to restrain her, she forcefully struggled against them. Ultimately three officers were involved in forcing her to the ground face down.

(b) the extent of harm caused by the offense;

Ithaca Police Officer Benjamin Buck received several scratches to the face during the melee. He did not require medical attention nor miss any time from work. Another officer complained of a headache.

(c) the evidence of guilt, whether admissible or inadmissible at trial;

There is substantial evidence that defendant sought to interfere with the arrest of Mr. Ferguson and to prevent her own arrest.

(d) the history, character and condition of the defendant;

Ms. DeGroat is a lifetime Ithaca resident with no prior criminal history.

(e) any exceptionally serious misconduct of law enforcement personnel in the investigation, arrest and prosecution of the defendant;

Upon careful review of the videotapes, the Court concludes that the Ithaca Police Officers overreacted to the initial situation. Although they did see Mr. Ferguson push Mr. Ming down, both men were on their feet and facing each other when the police rushed in to detain Mr. Ferguson. The police made no effort to defuse the situation or to simply separate the men while the conflict was sorted out. They rushed Mr. Ferguson and very aggressively tried to force him to the pavement when he was tasered in the back. Officer Herz was not justified in using a taser on Mr. Ferguson. His claim that Mr. Ferguson might have knocked Mr. Ming unconscious was clearly not true; his claim that he could tell Mr. Ferguson was getting ready to run is doubtful; and it is not accurate to characterize Mr. Ferguson's actions as resisting arrest.

(f) the purpose and effect of imposing upon the defendant a sentence authorized for the offense;

If defendant were convicted of either crime, the only purpose of a sentence would be punishment. There is no indication that she is in need of rehabilitation or supervision. The facts of this situation were unique and not indicative of any tendency toward unlawful behavior.

(g) the impact of a dismissal upon the confidence of the public in the criminal justice system;

This factor is difficult to assess. It is likely that some members of the public will disagree with a dismissal and support the police conduct. It is clear that others will see a dismissal as a just result.

The prosecuting attorney has demonstrated ambivalence about the case. After initially reducing the charges to a misdemeanor level, he sought and obtained felony charges through Grand Jury indictment. He subsequently proposed to resolve the entire case against defendant with a plea to a disorderly conduct violation, an offer rejected by defendant.

(h) the impact of a dismissal on the safety or welfare of the community;

The Court sees no negative impact on the safety or welfare of the community based upon this dismissal.

(i) where the court deems it appropriate, the attitude of the complainant or victim with respect to the motion;

It is highly likely that the officers involved oppose this dismissal.

(j) any other relevant fact indicating that a judgment of conviction would serve no useful purpose.

None.


Conclusion

Based upon the foregoing analyses, the court finds the Defendant's motion is granted. There are exceptional circumstances present here that warrant the relief sought.

This constitutes the Judgment and Order of the Court entered upon notice to all parties.

ENTER

Dated: September 27, 2019

**John C.
Rowley**  Digitally signed by John C. Rowley
DN: CN=John C. Rowley, C=US, OU=Tompkins
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Reason: I am the author of this document
Location: your signing location here
Date: 2019-09-27 11:26:48
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JOHN C. ROWLEY
TOMPKINS COUNTY JUDGE